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Counterclaim-Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BOARD OF TRUSTEES OF THE)
EMPLOYEE PAINTERS' TRUST; BOARD OF)
TRUSTEES OF THE DISTRICT COUNCIL 16)
NORTHERN CALIFORNIA JOURNEYMAN)
AND APPRENTICE TRAINING TRUST)
FUND; BOARD OF TRUSTEES OF THE)
SOUTHERN NEVADA PAINTERS AND)
DECORATORS AND GLAZIERS LABOR-)
MANAGEMENT COOPERATION)
COMMITTEE TRUST; BOARD OF)
TRUSTEES OF THE SOUTHERN NEVADA)
AND CALIFORNIA GLAZIERS,)
FABRICATORS, PAINTERS AND)
FLOORCOVERERS PENSION TRUST)
FUND; BOARD OF TRUSTEES OF THE)
INTERNATIONAL PAINTERS AND)
ALLIED TRADES INDUSTRY PENSION)
FUND; BOARD OF TRUSTEES OF THE)
PAINTERS AND ALLIED TRADES LABOR)
MANAGEMENT COOPERATION)
INITIATIVE; BOARD OF TRUSTEES OF)
THE FINISHING TRADES INSTITUTE;)
IUPAT POLITICAL ACTION TOGETHER)
FUND; STAR PROGRAM, INC.; SOUTHERN)
NEVADA PDCA/FCA INDUSTRY)
PROMOTION FUND,)

Plaintiffs,

vs.

Case No. 2:24-cv-01023-APG-NJK

**DEFENDANTS HOSPITALITY
RENOVATION, LLC'S AND MARIE
JAN BOWER'S ANSWER TO
PLAINTIFFS' COMPLAINT AND
COUNTERCLAIMS AGAINST
PLAINTIFFS**

OLYMPUS CONSTRUCTION LV, INC., a
Nevada corporation; HOSPITALITY
RENOVATION SERVICES, LLC, a Nevada
limited liability company; PHILIP GLEN
FRIEDBERG, an individual; MARIE JAN
BOWER, an individual; WESTERN
NATIONAL MUTUAL INSURANCE
COMPANY, a Minnesota corporation; GREAT
AMERICAN INSURANCE COMPANY, an
Ohio corporation; DOES I-X and ROES I-X,

Defendants.

OLYMPUS CONSTRUCTION LV, INC.;
HOSPITALITY RENOVATION SERVICES,
LLC; PHILIP GLEN FRIEDBERG; MARIE
JAN BOWER,

Counterclaim-Plaintiffs,

vs.

BOARD OF TRUSTEES OF THE
EMPLOYEE PAINTERS' TRUST; BOARD OF
TRUSTEES OF THE DISTRICT COUNCIL
NORTHERN CALIFORNIA JOURNEYMAN
AND APPRENTICE TRAINING TRUST
FUND; BOARD OF TRUSTEES OF THE
SOUTHERN NEVADA PAINTERS AND
DECORATORS AND GLAZIERS LABOR-
MANAGEMENT COOPERATION
COMMITTEE TRUST; BOARD OF
TRUSTEES OF THE SOUTHERN NEVADA
AND CALIFORNIA GLAZIERS,
FABRICATORS, PAINTERS AND
FLOORCOVERERS PENSION TRUST
FUND; BOARD OF TRUSTEES OF THE
INTERNATIONAL PAINTERS AND
ALLIED TRADES INDUSTRY PENSION
FUND; BOARD OF TRUSTEES OF THE
PAINTERS AND ALLIED TRADES LABOR
MANAGEMENT COOPERATION
INITIATIVE; BOARD OF TRUSTEES OF
THE FINISHING TRADES INSTITUTE;
IUPAT POLITICAL ACTION TOGETHER

1 FUND; STAR PROGRAM, INC.; SOUTHERN)
 2 NEVADA PDCA/FCA INDUSTRY)
 3 PROMOTION FUND,)
 4)
 5 Counterclaim-Defendants,)
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DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT

Defendants HOSPITALITY RENOVATION SERVICES, LLC, and MARIE JAN BOWER (“Defendants”), by and through their counsel of record, the law firm of Kamer Zucker Abbott, hereby answer Plaintiffs’ Complaint by DENYING EACH AND EVERY ALLEGATION in all paragraphs, except for those paragraphs or portions of paragraphs expressly and specifically admitted or otherwise referenced *infra*:

1. Answering Paragraphs 1, 2, 3, 4, and 7 of the Complaint, Defendants state that those allegations are procedural statements and/or legal conclusions that require no answer, but to the extent they contain factual allegations, Defendants deny each and every factual allegation contained in said paragraphs.

2. Answering Paragraph 10 of the Complaint, Defendants state that they are without sufficient knowledge or information to admit or deny the truth of the allegations and therefore deny each and every allegation contained in said paragraph.

3. Defendants admit the allegations contained in Paragraph 11 of the Complaint.

4. Defendants admit the allegations contained in Paragraph 12 of the Complaint.

5. Answering Paragraph 14 of the Complaint, Defendants state that those allegations are procedural statements and/or legal conclusions that require no answer, but to the extent they contain factual allegations, Defendants deny each and every factual allegation contained in said paragraph.

6. Answering Paragraph 15 of the Complaint, Defendants admit only that

1 FRIEDBERG is an individual residing in Clark County, Nevada, is the sole owner of OLYMPUS
2 CONSTRUCTION LV, INC., and was the former owner of HOSPITALITY RENOVATION
3 SERVICES, LLC. Defendants deny each and every other allegation contained in Paragraph 15 of
4 the Complaint.

5 7. Defendants admit the allegations contained in Paragraph 16 of the Complaint.

6 8. Defendants admit the allegations contained in Paragraph 17 of the Complaint.

7 9. Defendants admit the allegations contained in Paragraph 18 of the Complaint.

8 10. Defendants admit the allegations contained in Paragraph 22 of the Complaint.

9 11. Defendants admit the allegations contained in Paragraph 23 of the Complaint.

10 12. Answering Paragraphs 25, 26, 28, and 29 of the Complaint, Defendants state that
11 those allegations are procedural statements and/or legal conclusions that require no answer, but to
12 the extent they contain factual allegations, Defendants deny each and every factual allegation
13 contained in said paragraphs.

14 13. Answering Paragraph 30 of the Complaint, Defendants affirmatively state that the
15 CBAs and Trust Agreements speak for themselves and deny said allegations to the extent said
16 allegations deviate from the exact language of the CBAs and Trust Agreements. Defendants deny
17 each and every other allegation contained in Paragraph 30 of the Complaint.

18 14. Answering Paragraphs 31 and 36 of the Complaint, Defendants affirmatively state
19 that the CBAs speak for themselves and deny said allegations to the extent said allegations deviate
20 from the exact language of the CBAs. Defendants deny each and every other allegation contained in
21 Paragraphs 31 and 36 of the Complaint.

22 15. Answering Paragraph 41 of the Complaint, Defendants affirmatively state that the
23 CBAs and Trust Agreements speak for themselves and deny said allegations to the extent said
24 allegations deviates from the exact language of the CBAs and Trust Agreements. Defendants further

1 state that those allegations are procedural statements and/or legal conclusions that require no
2 answer, but to the extent they contain factual allegations, Defendants deny each and every factual
3 allegation contained in said paragraph.

4 16. Answering Paragraphs 42, 43, 44, and 45 of the Complaint, Defendants affirmatively
5 state that the CBAs and Trust Agreements speak for themselves and deny said allegations to the
6 extent said allegations deviate from the exact language of the CBAs. Defendants deny each and
7 every other allegation contained in Paragraphs 42, 43, 44, and 45 of the Complaint.

8 17. Answering Paragraphs 46 and 47 of the Complaint, Defendants state that they are
9 without sufficient knowledge or information to admit or deny the truth of the allegations and
10 therefore deny each and every allegation contained in said paragraphs.

11 18. Answering Paragraph 53 of the Complaint, Defendants admit only that Plaintiffs
12 have made a demand for payment. Defendants deny each and every other allegation contained in
13 Paragraph 53 of the Complaint.

14 19. Answering Paragraph 55 of the Complaint, Defendants admit only that OLYMPUS
15 CONSTRUCTION LV, INC., is owned by FRIEDBERG. Defendant further admits only that
16 HOSPITALITY RENOVATION SERVICES, LLC, is owned by BOWER. Defendants deny each
17 and every other allegation contained in Paragraph 55 of the Complaint.

18 20. Answering Paragraph 56 of the Complaint, Defendants admit only that
19 FRIEDBERG exercised control over the management, operations, and labor relations of
20 OLYMPUS CONSTRUCTION LV, INC. Defendants further admit only that BOWER exercised
21 control over the management, operations, and labor relations of HOSPITALITY RENOVATION
22 SERVICES, LLC. Defendants deny each and every other allegation contained in Paragraph 56 of
23 the Complaint.

24 21. Answering Paragraph 57 of the Complaint, Defendants admit only that

1 FRIEDBERG was controlling stockholder, shareholder, member, manager, director, officer,
2 principal, agent and/or key employee of OLYMPUS CONSTRUCTION LV, INC., whose duty
3 required decision making regarding the operations of OLYMPUS CONSTRUCTION LV, INC.,
4 procurement and negotiation of contracts, hiring/firing of work force, direction of labor relations,
5 project management, keeping corporate records and company books, managing financial affairs,
6 payment of expenses and accounts payable, tracking employee hours, preparing and processing
7 payroll and remitting reports, contributions and payments. Defendants further admit only that
8 BOWER was controlling stockholder, shareholder, member, manager, director, officer, principal,
9 agent and/or key employee of HOSPITALITY RENOVATION SERVICES, LLC, whose duty
10 required decision making regarding the operations of HOSPITALITY RENOVATION
11 SERVICES, LLC, procurement and negotiation of contracts, hiring/firing of work force, direction
12 of labor relations, project management, keeping corporate records and company books, managing
13 financial affairs, payment of expenses and accounts payable, tracking employee hours, preparing and
14 processing payroll and remitting reports, contributions and payments. Defendants deny each and
15 every other allegation contained in Paragraph 57 of the Complaint.

16 22. Answering Paragraphs 59 and 60 of the Complaint, Defendants admit only that
17 OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION SERVICES,
18 LLC have from time to time engaged in arm's length contracts with each other. Defendants deny
19 each and every other allegation contained in Paragraphs 59 and 60 of the Complaint.

20 23. Answering Paragraph 68 of the Complaint, Defendants state that they are without
21 sufficient knowledge or information to admit or deny the truth of the allegations and therefore deny
22 each and every allegation contained in said paragraph.

23 24. Defendants admit the allegations contained in Paragraph 72 of the Complaint.

24 25. Defendants state that they are without sufficient knowledge or information to admit

1 or deny the truth of the allegations and therefore deny each and every allegation contained in said
2 paragraph.

3 26. Answering Paragraph 74 of the Complaint, Defendants affirmatively state that the
4 CBAs and Trust Agreements speak for themselves and deny said allegations to the extent said
5 allegations deviate from the exact language of the CBAs. Defendants deny each and every other
6 allegation contained in Paragraph 74 of the Complaint.

7 27. Answering Paragraphs 77, 91, 100, 106, and 111 of the Complaint, Defendants
8 repeat and reassert their foregoing denials and responses to the foregoing paragraphs.

9 28. Answering Plaintiffs' Prayer for Relief, Defendants assert that Plaintiffs are not
10 entitled to any of the requested monetary damages in any amount at all or to any other kind of relief.

11 **DEFENDANTS' AFFIRMATIVE DEFENSES**

12 Defendants reserve the right to rely upon such other affirmative defenses as may be
13 supported by the facts to be determined by full and complete discovery and voluntarily withdraw
14 any affirmative defenses.

15 **FIRST AFFIRMATIVE DEFENSE**

16 Defendants deny all of Plaintiffs' allegations except as specifically set forth above. For
17 purposes of this Affirmative Defense only, Defendants allege that Plaintiffs' Complaint fails to state
18 claims upon which relief can be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 Plaintiffs' claims are barred by the conduct, actions, and/or inactions of Plaintiffs which
21 amount to and constitute an estoppel of the causes of action asserted and any relief sought.

22 **THIRD AFFIRMATIVE DEFENSE**

23 Plaintiffs' claims are barred by the doctrine of laches.
24

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiffs' Complaint is barred in whole due to fraud utilized to secure execution of the
3 Southern Nevada Painting, Wallcovering & Drywall Finishing Master Agreement by
4 HOSPITALITY RENOVATION SERVICES, LLC.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 Plaintiffs' claims are barred in whole or in part by the doctrines of accord, satisfaction,
7 release, and waiver.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 Plaintiffs' Complaint is barred in whole or in part and injunctive relief is improper because
10 of Plaintiffs' unclean hands.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 Plaintiffs' claims are barred by their own intentional acts and/or omissions.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 At all relevant times, Defendants acted in compliance with any contract(s) or agreement(s) to
15 which they were a party.

16 **NINTH AFFIRMATIVE DEFENSE**

17 Plaintiffs' authority to audit is derived by written agreement. Any demand to audit an entity
18 not party to the agreement exceeds the scope of the Plaintiffs' auditing authority and, as such,
19 Plaintiffs are precluded from pursuing related claims in their Complaint.

20 **TENTH AFFIRMATIVE DEFENSE**

21 Plaintiffs are not entitled to recovery of any costs, disbursements, attorney's fees, interest,
22 liquidated damages, or any other penalties available under ERISA § 502(g).

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiffs' Complaint has been brought without reasonable ground and/or to extort, harass,

1 or oppress Defendants.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 Plaintiffs' Complaint is barred, in whole or in part, because the injuries and damages claimed
4 by Plaintiffs resulted from acts and/or omissions of persons other than Defendants or their
5 authorized agents.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 Any damages sustained by Plaintiffs, if any, were not actually or proximately caused by any
8 act or omission of Defendants.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiffs' Complaint is barred, in whole or in part, because no definite or express terms of
11 the Trust Agreements or collective bargaining agreements provide for contributions by Defendants
12 as assessed by Plaintiff.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 Plaintiffs' Complaint is barred in whole or in part because Defendants operated as separate
15 and distinct entities.

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

17 Plaintiffs' Complaint is barred in whole or in part because Defendants did not have any
18 union animus.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 Plaintiffs' Complaint is barred in whole or in part by the statute of frauds.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 Plaintiffs' Complain is barred in whole or in part due to the Court's lack of subject matter
23 jurisdiction to hear claims regarding jurisdictional disputes between unions over covered work
24 whereas such primary jurisdiction is given to the National Labor Relations Board.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 Plaintiffs' Complaint is barred in whole or in part due to a failure of consideration.

3 **TWENTIETH AFFIRMATIVE DEFENSE**

4 Plaintiffs' Complaint is barred in whole or in part by the wholesale misclassification of
5 employees by the auditor during the audit.

6 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

7 Plaintiffs' Complaint is barred in whole or in part to the extent Defendants are not
8 employers required to make contributions by not being a signatory to certain agreements or
9 documents.

10 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11 Plaintiffs' Complaint is barred in whole or in part because Plaintiff cannot satisfy the burden
12 of proof as to damages.

13 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

14 Plaintiffs' Complaint is barred in whole or in part because the audit expenses and attorney's
15 fees and costs claimed by Plaintiffs were unreasonably incurred.

16 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

17 The nature of the claims asserted by Plaintiffs under cover of their Complaint is not specific
18 and is vague and ambiguous. Because Plaintiffs have not provided Defendants with specific
19 information regarding their Complaint, Defendants reserve their right to amend their Answer to
20 assert any applicable, additional, or other defenses constituting an avoidance or affirmative defense
21 at such time as the nature of Plaintiffs' claims and the facts relating to them are revealed to
22 Defendants.

23 WHEREFORE, Defendants pray this Court for relief as follows:

24 1. That Plaintiffs' Complaint be dismissed with prejudice;

2. That Defendants be awarded their reasonable attorneys' fees and costs in defense of this matter; and

3. For such and other further relief as the Court deems reasonable and proper.

DEFENDANTS' COUNTERCLAIMS AGAINST PLAINTIFFS

HOSPITALITY RENOVATION SERVICES, LLC, and MARIE JAN BOWER (for purposes of these counterclaims collectively referred to as "Counterclaim-Plaintiffs"), state counterclaims against Counterclaim-Defendants BOARD OF TRUSTEES OF THE EMPLOYEE PAINTERS' TRUST; BOARD OF TRUSTEES OF THE DISTRICT COUNCIL 16 NORTHERN CALIFORNIA JOURNEYMAN AND APPRENTICE TRAINING TRUST FUND; BOARD OF TRUSTEES OF THE SOUTHERN NEVADA PAINTERS AND DECORATORS AND GLAZIERS LABOR-MANAGEMENT COOPERATION COMMITTEE TRUST; BOARD OF TRUSTEES OF THE SOUTHERN NEVADA AND CALIFORNIA GLAZIERS, FABRICATORS, PAINTERS AND FLOORCOVERERS PENSION TRUST FUND; BOARD OF TRUSTEES OF THE INTERNATIONAL PAINTERS AND ALLIED TRADES INDUSTRY PENSION FUND; BOARD OF TRUSTEES OF THE PAINTERS AND ALLIED TRADES LABOR MANAGEMENT COOPERATION INITIATIVE; BOARD OF TRUSTEES OF THE FINISHING TRADES INSTITUTE; IUPAT POLITICAL ACTION TOGETHER FUND; STAR PROGRAM, INC.; SOUTHERN NEVADA PDCA/FCA INDUSTRY PROMOTION FUND (for purposes of these counterclaims collectively referred to as "Counterclaim-Defendants") as follows:

JURISDICTION

1. This Court has jurisdiction over these counterclaims pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, and Fed. R. Civ. P. 13.

1 **VENUE**

2 2. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of
3 the events giving rise to the claims occurred in this district.

4 **THE PARTIES**

5 3. OLYMPUS CONSTRUCTION LV, INC., is a Nevada corporation. During the
6 relevant time, OLYMPUS CONSTRUCTION LV, INC. maintained an office and place of business
7 in Las Vegas, Nevada. OLYMPUS CONSTRUCTION LV, INC., is signatory to the Southern
8 Nevada Painting, Wallcovering & Drywall Finishing Master Agreement, Floorcoverers Local 1512
9 Master Agreement, and Southern Nevada Glaziers Master Agreement.

10 4. PHILIP GLEN FRIEDBERG is an individual residing in Clark County, Nevada.
11 FRIEDBERG is the owner and operator of OLYMPUS CONSTRUCTION LV, INC.

12 5. HOSPITALITY RENOVATION SERVICES, LLC, is a Nevada limited liability
13 company. During the relevant time, HOSPITALITY RENOVATION SERVICES, LLC maintained
14 an office and place of business in Las Vegas, Nevada. HOSPITALITY RENOVATION
15 SERVICES, LLC, is only signatory to the Southern Nevada Painting, Wallcovering & Drywall
16 Finishing Master Agreement.

17 6. MARIE JAN BOWER is an individual residing in Clark County, Nevada. BOWER
18 is the owner and operator of HOSPITALITY RENOVATION SERVICES, LLC.

19 7. Upon information and belief, the Employee Painters' Trust, District Council 16
20 Northern California Journeyman and Apprentice Training Trust Fund, Southern Nevada Painters
21 and Decorators and Glaziers Labor-Management Cooperation Committee Trust, Southern Nevada
22 and California Glaziers, Fabricators, Painters and Floorcoverers Pension Trust Fund, International
23 Painters and Allied Trades Industry Pension Fund, Painters and Allied Trades Labor-Management
24 Cooperation Initiative, and Finishing Trades Institute (collectively "Trusts") are each express trusts

1 and/or committees created pursuant to written declarations of trust (“Trust Agreements”),
2 consistent with § 302(c) of the Labor Management Relations Act of 1947 (29 U.S.C. § 186(c)).

3 8. Upon information and belief, the Board of Trustees and the individual Trustees of
4 each of the Trusts is a “named fiduciary” within the meaning of 29 U.S.C. §1102(a), a “plan
5 sponsor” within the meaning of 29 U.S.C. § 1002(16), and a “fiduciary” within the meaning of 29
6 U.S.C. § 1002(21), with respect to collection of contributions due to the Trusts, provision of benefits
7 to Trust beneficiaries, and related matters.

8 9. Upon information and belief, Star Program, Inc. is a California nonprofit mutual
9 benefit corporation organized for the purpose of providing job training in the glazing, painting,
10 drywall finishing and floor covering crafts, consistent with those established under 29 U.S.C. §
11 186(c).

12 10. Upon information and belief, one or more of the Counterclaim-Defendants are
13 jointly administered in Las Vegas, Nevada.

14 **NATURE OF COUNTERCLAIMS AND THIRD-PARTY COMPLAINT**

15 11. This is an action to combat an abusive scheme designed to force separately owned
16 and operated business entities to operate as if they are subject to the same labor agreements,
17 although factually that is untrue, which circumvents the democratic process favored by federal labor
18 policy allowing employee free choice, and to obtain unlawful contributions from the same business
19 entities.

20 12. The Counterclaim-Defendants acted in concert through agents by inducing
21 Counterclaim-Plaintiffs to sign a settlement agreement, which required HOSPITALITY
22 RENOVATION SERVICES, LLC, to become a signatory only to the Southern Nevada Painting,
23 Wallcovering & Drywall Finishing Master Agreement, and agreeing that HOSPITALITY
24 RENOVATION SERVICES, LLC, is a distinct entity from OLYMPUS CONSTRUCTION LV,

1 INC. Thereafter, the Counterclaim-Defendants, however, intentionally breached the settlement
2 agreement by alleging that HOSPITALITY RENOVATION SERVICES, LLC, and OLYMPUS
3 CONSTRUCTION LV, INC., are alter ego, single, or joint employers, and demanding contributions
4 be paid jointly for work performed by employees of each separate entity.

5 13. Utilizing the threat of an otherwise legitimate process—an audit, the collection of
6 trust fund contributions, and a lawsuit to collect the same—results in the extortion of the
7 Counterclaim-Plaintiffs to be obligated by agreements to which they are not signatories and/or to be
8 responsible for the contribution obligations of distinct legal entities. Such action by the
9 Counterclaim-Defendants constitutes a breach of contract, breach of the covenant of good faith and
10 fair dealing, civil conspiracy, and an abuse of process.

11 14. As a result of the foregoing, Counterclaim-Plaintiffs have been damaged by the costs
12 of the audit against them and have been forced to expend resources to hire counsel to defend
13 against the improperly lawsuit filed against them and to bring these counterclaims. The
14 Counterclaim-Plaintiffs seek to remedy that harm through this action.

15 **FACTUAL BACKGROUND**

16 15. The foregoing paragraphs are restated and realleged as if stated in full herein.

17 16. On or about September 15, 2016, the International Union of Painters & Allied
18 Trades District Council 15, Painters Local 159 (“Union”) initiated a grievance against OLYMPUS
19 CONSTRUCTION LV, INC., alleging that HOSPITALITY RENOVATION SERVICES, LLC, is
20 a “sister company” to OLYMPUS CONSTRUCTION LV, INC., and thereby a signatory to the
21 master labor agreement and obligated to the terms and conditions set forth therein (“Grievance”).

22 17. Thereafter, on or about September 20, 2016, the Employee Painters’ Trust, Painters
23 & Floorcoverers Joint Committee, Painters, Glaziers & Floorcoverers Joint Apprenticeship &
24 Journeyman Training Trust, Painters, Glaziers & Floorcoverers Safety Training Trust Fund, Painters

1 Organizing Fund, Southern Nevada PDCA/FCA Industry Promotion Fund, International Union of
2 Painters & Allied Trades Industry Pension Fund, IUPAT Finishing Trades Institute, Painters &
3 Allied Trades Labor Management Cooperation Initiative, and IUPAT Political Action Together
4 Fund initiated a payroll compliance audit of OLYMPUS CONSTRUCTION LV, INC. (“Audit”).

5 18. As part of the Audit, the Employee Painters’ Trust, Painters & Floorcoverers Joint
6 Committee, Painters, Glaziers & Floorcoverers Joint Apprenticeship & Journeyman Training Trust,
7 Painters, Glaziers & Floorcoverers Safety Training Trust Fund, Painters Organizing Fund, Southern
8 Nevada PDCA/FCA Industry Promotion Fund, International Union of Painters & Allied Trades
9 Industry Pension Fund, IUPAT Finishing Trades Institute, Painters & Allied Trades Labor
10 Management Cooperation Initiative, and IUPAT Political Action Together Fund sought records and
11 documents pertaining to HOSPITALITY RENOVATION SERVICES, LLC, which they alleged
12 was a “possible closely related company” to OLYMPUS CONSTRUCTION LV, INC.

13 19. OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION
14 SERVICES, LLC, disputed that they had a “closely related company” or “sister company”
15 relationship. Indeed, FRIEDBERG sold HOSPITALITY RENOVATION SERVICES, LLC, on or
16 about January 1, 2014, through an arm’s length transaction for valuable consideration, to BOWER,
17 with whom he has never had a familial relationship of any kind.

18 20. The Union, OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY
19 RENOVATION SERVICES, LLC, eventually reached a resolution of their dispute and entered into
20 a settlement agreement executed by the parties therein in June 2017.

21 21. As part of the settlement agreement among the Union, OLYMPUS
22 CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION SERVICES, LLC,
23 HOSPITALITY RENOVATION SERVICES, LLC, agreed to be bound by all the terms and
24 conditions of the July 1, 2015 – June 30, 2019 Painters & Decorators Master Labor Agreement

1 between the International Union of Painters and Allied Trades District Council #15, Local Union
2 #159 and the Painting and Decorating Contractors of America Southern Nevada Chapter, Las
3 Vegas, Nevada (“Master Labor Agreement”).

4 22. HOSPITALITY RENOVATION SERVICES, LLC, further agreed, and did in fact,
5 take the necessary steps to sign the necessary documents pertaining to the Master Agreement, as well
6 as any corresponding Trust Fund documents.

7 23. HOSPITALITY RENOVATION SERVICES, LLC, is not a signatory to any other
8 collective bargaining agreement.

9 24. The Union, OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY
10 RENOVATION SERVICES, LLC, expressly agreed as part of their settlement agreement that
11 terms and conditions of their settlement agreement, or performance of the same, must not be
12 construed as the admission of or creation of a joint or single employer relationship between
13 OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION SERVICES,
14 LLC, and that such relationship was specifically disclaimed by all of the parties.

15 25. Concurrent to the settlement of the Grievance, OLYMPUS CONSTRUCTION LV,
16 INC., and HOSPITALITY RENOVATION SERVICES, LLC, entered into a settlement agreement
17 with the Employee Painters’ Trust, Painters & Floorcoverers Joint Committee, Painters, Glaziers &
18 Floorcoverers Joint Apprenticeship & Journeyman Training Trust, Painters, Glaziers &
19 Floorcoverers Safety Training Trust Fund, Painters Organizing Fund, Southern Nevada
20 PDCA/FCA Industry Promotion Fund, International Union of Painters & Allied Trades Industry
21 Pension Fund, IUPAT Finishing Trades Institute, Painters & Allied Trades Labor Management
22 Cooperation Initiative, and IUPAT Political Action Together Fund.

23 26. Per the terms of the settlement agreement, the Employee Painters’ Trust, Painters &
24 Floorcoverers Joint Committee, Painters, Glaziers & Floorcoverers Joint Apprenticeship &

Journeyman Training Trust, Painters, Glaziers & Floorcoverers Safety Training Trust Fund, Painters Organizing Fund, Southern Nevada PDCA/FCA Industry Promotion Fund, International Union of Painters & Allied Trades Industry Pension Fund, IUPAT Finishing Trades Institute, Painters & Allied Trades Labor Management Cooperation Initiative, and IUPAT Political Action Together Fund expressly reserved the right to conduct a payroll compliance review and/or audit of OLYMPUS CONSTRUCTION LV, INC., for the post-Audit period.

27. However, per the express terms of the settlement agreement, “[a]ny liabilities to the Trust Funds that may arise out of such Post-Audit Period, including claims for subcontract violations under Article 14 of the MLA where [HOSPITALITY RENOVATION SERVICES, LLC] was hired to perform covered work under a subcontract to [OLYMPUS CONSTRUCTION LV, INC.], ***but excluding claims related to [HOSPITALITY RENOVATION SERVICES, LLC] as a related company***, are expressly reserved, not waived, and not released.” [emphasis added].

28. Despite the Union’s disclaimer of any related entity status between OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION SERVICES, LLC, and the Employee Painters’ Trust, Painters & Floorcoverers Joint Committee, Painters, Glaziers & Floorcoverers Joint Apprenticeship & Journeyman Training Trust, Painters, Glaziers & Floorcoverers Safety Training Trust Fund, Painters Organizing Fund, Southern Nevada PDCA/FCA Industry Promotion Fund, International Union of Painters & Allied Trades Industry Pension Fund, IUPAT Finishing Trades Institute, Painters & Allied Trades Labor Management Cooperation Initiative, and IUPAT Political Action Together Fund’s express exclusion of HOSPITALITY RENOVATION SERVICES, LLC, as a related company, Counterclaim-Defendants have audited and brought the instant lawsuit against OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION SERVICES, LLC, alleging, among other things, that OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION SERVICES,

1 LLC, are a single employer, joint employers, or alter egos of each other.

2 29. The breach of the settlement agreement by the Employee Painters' Trust, Painters &
3 Floorcoverers Joint Committee, Painters, Glaziers & Floorcoverers Joint Apprenticeship &
4 Journeyman Training Trust, Painters, Glaziers & Floorcoverers Safety Training Trust Fund, Painters
5 Organizing Fund, Southern Nevada PDCA/FCA Industry Promotion Fund, International Union of
6 Painters & Allied Trades Industry Pension Fund, IUPAT Finishing Trades Institute, Painters &
7 Allied Trades Labor Management Cooperation Initiative, and IUPAT Political Action Together
8 Fund has been compounded by the overreaching of their agent, Berry & Company CPAs, LTD, in
9 the wholesale misclassification of employees, descriptions of the work performed, and application of
10 collective bargaining provisions to non-signatory employers, resulting in an exorbitant inflation of
11 allegedly owed contributions.

12 30. Due to the breach of contract and bad faith conduct of Counterclaim-Defendants,
13 Counterclaim-Plaintiffs have been damaged and will continue to incur further damages during the
14 course of this litigation. The acts of the Counterclaim-Defendants alleged above were characterized
15 by fraud, oppression, or malice, as well as conscious disregard for the rights of the Counterclaim-
16 Plaintiffs, and the Counterclaim-Plaintiffs are therefore entitled to recover punitive damages.

17 **FIRST COUNTERCLAIM – BREACH OF CONTRACT**

18 31. The foregoing paragraphs are restated and realleged as if stated in full herein.

19 32. A valid agreement existed between OLYMPUS CONSTRUCTION LV, INC., and
20 HOSPITALITY RENOVATION SERVICES, LLC, and the Employee Painters' Trust, Painters &
21 Floorcoverers Joint Committee, Painters, Glaziers & Floorcoverers Joint Apprenticeship &
22 Journeyman Training Trust, Painters, Glaziers & Floorcoverers Safety Training Trust Fund, Painters
23 Organizing Fund, Southern Nevada PDCA/FCA Industry Promotion Fund, International Union of
24 Painters & Allied Trades Industry Pension Fund, IUPAT Finishing Trades Institute, Painters &

1 Allied Trades Labor Management Cooperation Initiative, and IUPAT Political Action Together
2 Fund.

3 33. OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION
4 SERVICES, LLC, fulfilled their obligations under the agreement.

5 34. The Employee Painters' Trust, Painters & Floorcoverers Joint Committee, Painters,
6 Glaziers & Floorcoverers Joint Apprenticeship & Journeyman Training Trust, Painters, Glaziers &
7 Floorcoverers Safety Training Trust Fund, Painters Organizing Fund, Southern Nevada
8 PDCA/FCA Industry Promotion Fund, International Union of Painters & Allied Trades Industry
9 Pension Fund, IUPAT Finishing Trades Institute, Painters & Allied Trades Labor Management
10 Cooperation Initiative, and IUPAT Political Action Together Fund breached the agreement by
11 treating and pursuing an audit and litigation against OLYMPUS CONSTRUCTION LV, INC., and
12 HOSPITALITY RENOVATION SERVICES, LLC, as if they were a single employer, joint
13 employer, or alter egos of each other.

14 35. By breaching the agreement, the Employee Painters' Trust, Painters & Floorcoverers
15 Joint Committee, Painters, Glaziers & Floorcoverers Joint Apprenticeship & Journeyman Training
16 Trust, Painters, Glaziers & Floorcoverers Safety Training Trust Fund, Painters Organizing Fund,
17 Southern Nevada PDCA/FCA Industry Promotion Fund, International Union of Painters & Allied
18 Trades Industry Pension Fund, IUPAT Finishing Trades Institute, Painters & Allied Trades Labor
19 Management Cooperation Initiative, and IUPAT Political Action Together Fund have damaged
20 OLYMPUS CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION SERVICES,
21 LLC, and will continue do so as they maintain the present litigation in an amount to be proven at
22 trial.

23 **SECOND COUNTERCLAIM – BREACH OF THE COVENANT OF GOOD FAITH**
24 **AND FAIR DEALING**

36. The foregoing paragraphs are restated and realleged as if stated in full herein.

1 37. In every contract under Nevada law, including the one between OLYMPUS
2 CONSTRUCTION LV, INC., and HOSPITALITY RENOVATION SERVICES, LLC, and the
3 Employee Painters' Trust, Painters & Floorcoverers Joint Committee, Painters, Glaziers &
4 Floorcoverers Joint Apprenticeship & Journeyman Training Trust, Painters, Glaziers &
5 Floorcoverers Safety Training Trust Fund, Painters Organizing Fund, Southern Nevada
6 PDCA/FCA Industry Promotion Fund, International Union of Painters & Allied Trades Industry
7 Pension Fund, IUPAT Finishing Trades Institute, Painters & Allied Trades Labor Management
8 Cooperation Initiative, and IUPAT Political Action Together Fund, there is a covenant of good faith
9 and fair dealing, which Counterclaim-Defendants breached.

10 38. The breach by the Employee Painters' Trust, Painters & Floorcoverers Joint
11 Committee, Painters, Glaziers & Floorcoverers Joint Apprenticeship & Journeyman Training Trust,
12 Painters, Glaziers & Floorcoverers Safety Training Trust Fund, Painters Organizing Fund, Southern
13 Nevada PDCA/FCA Industry Promotion Fund, International Union of Painters & Allied Trades
14 Industry Pension Fund, IUPAT Finishing Trades Institute, Painters & Allied Trades Labor
15 Management Cooperation Initiative, and IUPAT Political Action Together Fund has been
16 compounded by the overreaching of their agent, Berry & Company CPAs, LTD, in the wholesale
17 misclassification of employees, descriptions of the work performed, and application of collective
18 bargaining provisions to non-signatory employers, resulting in an exorbitant inflation of allegedly
19 owed contributions.

20 39. The conduct of the Counterclaim-Defendants caused, and continues to cause,
21 significant injury to Counterclaim-Plaintiffs, including being damaged by the costs of the audit
22 against them and being forced to expend resources to retain counsel and to bring these
23 counterclaims.

24 40. As a direct and proximate result of the foregoing the Counterclaim-Plaintiffs have

1 been damaged in an amount to be proven at trial.

2 41. The acts of the Counterclaim-Defendants alleged above were characterized by fraud,
3 oppression, or malice, as well as conscious disregard for the rights of the Counterclaim-Plaintiffs,
4 and the Counterclaim-Plaintiffs are therefore entitled to recover punitive damages.

5 **THIRD COUNTERCLAIM – CIVIL CONSPIRACY**

6 42. The foregoing paragraphs are restated and realleged as if stated in full herein.

7 43. As alleged above, Counterclaim-Defendants conspired together and with their agents
8 in furtherance of the intentional breach of contract in an effort to unjustly and unlawfully force
9 contributions to Counterclaim-Defendants from non-signatory entities and/or for work not covered
10 by the applicable collective bargaining agreements.

11 44. The conduct of the Counterclaim-Defendants caused, and continues to cause,
12 significant injury to Counterclaim-Plaintiffs, including being damaged by the costs of the audit
13 against them and being forced to expend resources to retain counsel and to bring these
14 counterclaims.

15 45. As a direct and proximate result of the foregoing the Counterclaim-Plaintiffs have
16 been damaged in an amount to be proven at trial.

17 46. The acts of the Counterclaim-Defendants alleged above were characterized by fraud,
18 oppression, or malice, as well as conscious disregard for the rights of the Counterclaim-Plaintiffs,
19 and the Counterclaim-Plaintiffs are therefore entitled to recover punitive damages.

20 **FOURTH COUNTERCLAIM – ABUSE OF PROCESS**

21 47. The foregoing paragraphs are restated and realleged as if stated in full herein.

22 48. This claim is brought against all of the Counterclaim-Defendants.

23 49. On May 31, 2024, the Counterclaim-Defendants filed this Lawsuit against the
24 Counterclaim-Plaintiffs, alleging the Counterclaim-Plaintiffs failed to make contributions to the

1 Funds in violation of a collective bargaining agreement, related trust agreements, and the Employee
2 Retirement Income Security Act of 1974 (“ERISA”).

3 50. The Counterclaim-Defendants filed this Lawsuit against the Counterclaim-Plaintiffs
4 despite the fact that Counterclaim-Defendants knew that: (i) no valid collective bargaining
5 agreement and related trust agreements existed and correspondingly that HOSPITALITY
6 RENOVATION SERVICES, LLC, had no obligation to make contributions to the Funds for
7 certain work; (ii) that HOSPITALITY RENOVATION SERVICES, LLC, is a separate and distinct
8 entity from OLYMPUS CONSTRUCT LV, INC.; and (iii) Counterclaim-Defendants’ express
9 agreement that HOSPITALITY RENOVATION SERVICES, LLC, and OLYMPUS
10 CONSTRUCTION LV, INC., were not to be considered alter ego, single, or joint employers.

11 51. Counterclaim-Defendants filed this Lawsuit against the Counterclaim-Plaintiffs for
12 ulterior purposes, including but not limited to: (i) to extort and coerce HOSPITALITY
13 RENOVATION SERVICES, LLC, and OLYMPUS CONSTRUCTION LV, INC., to operate as if
14 they were both signatories to all of the relevant collective bargaining agreements and an alter ego,
15 single, or joint employer; (ii) to threaten to put out Counterclaim-Plaintiffs out of business through
16 audit and litigation costs; and (iii) to unlawfully enrich the Counterclaim-Defendants through
17 contributions of known non-signatory entities and/or for work not covered by the applicable
18 collective bargaining agreements.

19 52. Counterclaim-Defendants committed willful acts in the use of the process not
20 proper in the regular conduct of the proceedings, including but not limited to threatening and
21 actually pursuing litigation against Counterclaim-Plaintiffs if they did not provide audit
22 documentation or make certain contributions.

23 53. As a direct and proximate result of the foregoing the Counterclaim-Plaintiffs have
24 been damaged in an amount to be proven at trial.

54. The acts of the Counterclaim-Defendants alleged above were characterized by fraud, oppression, or malice, as well as conscious disregard for the rights of the Counterclaim-Plaintiffs, and the Counterclaim-Plaintiffs are therefore entitled to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Counterclaim-Plaintiffs pray for relief as follows:

1. That judgment be rendered in favor of the Counterclaim-Plaintiffs on all of their counterclaims in an amount to be proven at trial;
2. For punitive damages in an amount to be proven at trial;
3. For such other and further relief as the Court deems reasonable and proper.

JURY DEMAND

Defendants/Counterclaim-Plaintiffs hereby demand that all triable issues and claims be heard and tried by a jury.

DATED this 3rd day of September, 2024.

Respectfully submitted,

KAMER ZUCKER ABBOTT

By: /s/ R. Todd Creer
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Attorneys for Defendants/Counterclaim-Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of September, 2024, the undersigned employee of Kamer Zucker Abbott served a copy of the foregoing **DEFENDANTS HOSPITALITY RENOVATION SERVICES, LLC'S AND MARIE JAN BOWER'S ANSWER TO PLAINTIFFS' COMPLAINT AND COUNTERCLAIMS** through the Electronic Case Filing system of the United States District Court, District of Nevada to:

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